

REMARKS

Claims 12, 13, 20 to 25, and 32 to 35 are pending in the present application.

In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 12, 13, 20 to 25, and 32 to 35 were rejected under 35 U.S.C. § 103(a) as unpatentable over PCT Pub. No. WO/2001/0044639 (“Matischuk”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As regards claim 12 and 24, they each provide for, in relevant part, the following: specifying a setpoint for at least one output variable of the drive unit; and specifying a setpoint for an operating variable of the drive unit in at least one operating state of the drive unit, in which: *in the at least one operating state of the drive unit, the at least one output variable of the drive unit is specified by approximating an actual value for the operating variable to the setpoint for the operating variable without consideration of the setpoint for the at least one output variable, the at least one output variable is one of a torque*

and a power of the drive unit, the operating variable is a speed of an engine of the drive unit, and the at least one operating state is a start-up operating state of the drive unit.

Thus, each of claims 12 and 24 provide for *specifying a setpoint for an operating variable* (which is a speed of an engine) *of the drive unit in at least one operating state of the drive unit*. The Office Action (at page 3) refers to a setpoint value pair MSOLLRES and TSOLLRES of Matischuk (page. 6, lines 20 to 25) as assertedly somehow supposedly disclosing specifying the setpoint for a speed of the engine. In fact, however, the asserted setpoint value pair MSOLLRES and TSOLLRES of Matischuk unrelatedly concerns ignition timing and air supply rather than the speed of an engine.

Also, if a setpoint value for the torque (or, output variable) and the engine speed (or, operating variable) are both specified for these two quantities simultaneously during the engine start, this may lead to problems.

Therefore, according to the presently claimed subject matter, the torque may be chosen such that it makes the actual engine speed approximate the setpoint value of the engine speed, which may in a way “overrule” the setpoint value of the torque, or, it can be said that the setpoint value of the torque is not considered. The Matischuk reference plainly does not disclose or suggest these features of the presently claimed subject matter. In particular, it does not disclose (or suggest) that *the operating variable is a speed of an engine of the drive unit* as provided for in the context of claims 12 and 24.

Therefore, Matischuk does not disclose all of the features of claims 12 and 24, as presented, or any of the dependent claims, so that these claims are allowable.

As regards claims 13 and 25, as presented, they include features like those of claims 12 and 24, and they are therefore allowable for essentially the same reasons as claims 12 and 24, as are the dependent claims, so that these claims are allowable.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner

provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, all of claims 12, 13, 20 to 25, and 32 to 35 are allowable.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,
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